THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.23586 of 2007

DATED: 12.11.2007

Between:

Y.M.Ismail Sasha ….Petitioner

AND

1. The District Collector, Kurnool,
   Kurnool District and others ….Respondents

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THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.23586 of 2007

ORDER:

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Heard the learned counsel on record.

2. The present writ petition is filed for issuance of a writ or order or direction more particularly, one in the nature of writ of Mandamus declaring the action of the respondents in issuing Memo No.Rc.DSO/CSI (2). Ec.58/2007, dated 29.10.2007 as illegal and arbitrary, and to pass such other suitable orders.

3. It is stated by the petitioner in the affidavit filed in support of the writ petition that he is a poor man, who had raised loan from private persons to buy a lorry to eke out his livelihood. It is also stated that the lorry was engaged to transport tiles from Dovvur to Chennai on 13.09.2007 and after delivery of tiles, on the way out back to Dovvur, the lorry was engaged by the lorry driver of another lorry bearing No.AP 21 X 1279, which was struck in between Nellore and Gudur. While so, the lorry driver of the said vehicle has requested the petitioner's lorry driver to shift and transport rice as his lorry has attained severe break down and is unable to move. It is stated that upon the request of the said lorry driver, the rice was shifted to the petitioner's lorry after taking necessary documents from the said lorry driver, including the delivery challan and credit bill showing the quality and quantity of rice issued by one Sri Padmavathi Ammavar Traders,

Chennai.

4. It is further stated that the vehicle has passed from various check posts and wherever, it came across and even the vehicle was checked at agricultural check post at Nandyal and passed through the same after showing all the written papers, which are handed over by earlier lorry driver. It is further stated that the lorry was engaged for transport of rice as there is no restriction for transport of rice and it does not require any permit as per the control orders issued by the Central Government. It is also stated that on 15.09.2007, the third respondent herein has inspected the lorry while the same was passing near Nandyal bypass road and seized the same with a suspicion that the stock in the vehicle is belonging of PDS. It is further stated that after showing and submitting all the relevant written papers, the third respondent did not consider the same. It is stated that the vehicle, in which the rice was originally transported, developed repairs and the rice was shifted to the petitioner's vehicle and the petitioner's vehicle number was also put on the relevant papers. It is further stated that there is no restriction or any control order in transporting the rice and if any vehicle meets with any accident or repair, the vehicle can be changed and there is no necessity of approval for change of the vehicle from any authority.

5. It is further stated that the transport of rice in either states i.e., in Tamil Nadu as well as in Andhra Pradesh does not require any permit and the transport is *bona fide* for usual entry charges and the seizure of vehicle by the third respondent has deprived the petitioner as he is put to irreparable loss and there are absolutely no grounds for seizure of lorry as the transport of rice by the petitioner's lorry are covered by valid bills, delivery note and credit bill. It is further stated that there is no irregularity or illegality committed by the petitioner or his lorry driver in transport of goods entrusted for transportation as there are no restrictions as to transport of rice throughout India and hence as such,

the petitioner has not committed any offence in employment of his lorry to transport rice. It is further stated that after coming to know about the seizure of the vehicle, the petitioner filed a petition before the second respondent for release of the vehicle i.e., lorry bearing No.AP 04 X 0288 on 23.09.2007 and the second respondent has passed orders dated 27.10.2007 directing him to furnish bank guarantee of Rs.1.00 lakh for release of the vehicle. It is further stated that a petition has been filed before the District Collector, Kurnool, to revise the orders of the second respondent dated 27.10.2007 and the first respondent herein has issued memo *vide* Rc.DSO/CSI (2) Ec.58/2007 dated 29.10.2007 stating that the vehicle would be released after furnishing bank guarantee for Rs.1.00 lakh as ordered by the Joint Collector and further directed to file Bank Guarantee immediately to release the vehicle.

6. It is further stated that the petitioner is a poor man and he has raised loan from private persons to purchase the lorry to eke out his livelihood and it is impossible for him to furnish bank guarantee of Rs.1.00 lakh as directed by the District Collector as no offence was committed by him.

7. The learned Assistant Government Pleader for Civil Supplies had placed instructions before this Court to the effect that there is an objection that the driver has not cooperated to the prosecution in furnishing correct information.

8. In view of the facts and circumstances, as already specified supra, this Court without expressing any opinion relating to the merits and demerits of the matter, is inclined to dispose of the writ petition with a direction that the second respondent shall accept third party surety to a tune of Rs.1.00 lakhs (Rupees one lakh only) instead of bank guarantee and release the vehicle, in question, on condition of

the petitioner furnishing an undertaking not to alienate the vehicle and producing the same as and when required.

9. The writ is disposed of accordingly with the above direction. No order as to costs.

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P.S.NARAYANA, J

DATED:12th November, 2007
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